

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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THOMAS WETMORE by and through his mother )  
and next best friend, JAMIE WETMORE and )  
JAMIE WETMORE and JOHN WETMORE, )  
Individually, )  
Plaintiffs )  
V. )  
MEDICAL LIABILITY MUTUAL )  
INSURANCE COMPANY, )  
Defendant )

U.S. DISTRICT COURT  
DISTRICT OF MASS.

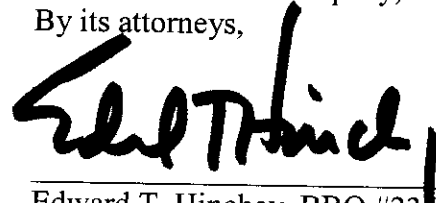
DOCKET NO. 1:03-cv-12235-RGS

DEFENDANT, MEDICAL LIABILITY MUTUAL INSURANCE COMPANY'S,  
MOTION TO DISMISS, OR, IN THE ALTERNATIVE, MOTION TO STAY

Now comes the defendant, Medical Liability Mutual Insurance Company, and hereby moves pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure to dismiss the plaintiffs' Complaint, or, in the alternative, for an order to stay the action pending resolution of the underlying malpractice claim. As grounds in support of this motion, the defendant states that the dismissal or stay is mandated as the plaintiffs are seeking to pursue purported unfair and deceptive insurance practice claims under Mass. Gen. Laws ch. 93A/176D against the defendant, while the underlying medical malpractice claim pertaining to the defendant's insured remains unresolved and disputed. In fact, a trial in the underlying medical malpractice claim is currently scheduled to go forward on January 5, 2004 in the Essex Superior Court. Therefore, as more fully set forth in the accompanying Memorandum of Law, the plaintiffs' action is premature and must be either dismissed or stayed.

WHEREFORE, the defendant, Medical Liability Mutual Insurance Company, respectfully requests that this Honorable Court allow its Motion to Dismiss, or, in the Alternative, Motion to Stay.

Respectfully submitted,  
The Defendant, Medical Liability  
Mutual Insurance Company,  
By its attorneys,



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Dated: December 15, 2003

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